

THE HONORABLE TIFFANY M. CARTWRIGHT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CANTON PORT SERVICES, LLC,

Plaintiff,

v.

M/V INDIGO SPICA (IMO No. 9708758),  
her engines, boilers, apparel, tackle, boats,  
appurtenances, etc., in rem,

Defendant.

Case No. 3:23-cv-06048-TMC

ANSWER TO FIRST AMENDED  
COMPLAINT

Pursuant to Rule C(6) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, I.M.S. Maritime S.A. (“IMS”), as Claimant to the *in rem* defendant vessel M/V INDIGO SPICA, IMO Number 9708758 (the “Vessel”), by and through undersigned counsel, hereby responds to Plaintiff’s First Amended Verified Complaint (the “Complaint”) upon information and belief as follows:

**I. JURISDICTION AND VENUE**

1. The averments of paragraph 1 of the Complaint are denied as conclusions of law.

2. The averments of paragraph 2 of the Complaint are denied as conclusions of law.

3. The averments of paragraph 3 of the Complaint are denied as conclusions of

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1 law.

2 **II. JURISDICTION AND VENUE**

3 4. Answering Defendant is without knowledge or information sufficient to justify  
4 a belief as to the truth of the averments of paragraph 4 of the Complaint, and therefore, denies  
5 the same and demands strict proof thereof.

6 5. Answering Defendant is without knowledge or information sufficient to justify  
7 a belief as to the truth of the averments of paragraph 5 of the Complaint, and therefore, denies  
8 the same and demands strict proof thereof.

9 6. Admitted.

10 7. Admitted.

11 8. Answering Defendant is without knowledge or information sufficient to justify  
12 a belief as to the truth of the averments of paragraph 8 of the Complaint, and therefore, denies  
13 the same and demands strict proof thereof.

14 **III. STATEMENT OF FACTS**

15 9. Answering Defendant admits only that the Vessel was time chartered to non-  
16 party Dragon Carriers Ltd., but denies knowledge or information sufficient to form a belief as  
17 to the remainder of the allegations in paragraph 9 of the Complaint concerning any sub charters  
18 of the Vessel.

19 10. Answering Defendant admits only that the Vessel arrived at Canton Pier on or  
20 about July 19, 2022 for the unloading of cargo from the Vessel. Answering Defendant denies  
21 that the purpose of the docking was to unload distressed cargo. Answering Defendant denies  
22 the allegations concerning the Master's direction and approval as conclusions of law.

23 11. Answering Defendant admits only that Canton provided stevedoring services  
24 to the Vessel between July 19, 2022 and July 25, 2022. Answering Defendant denies the  
25 remaining allegations concerning the Master's direction and approval as conclusions of law.

26 12. Answering Defendant admits only that the Master stamped/signed Canton's  
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1 reports. Answering Defendant denies the remaining allegations of paragraph 12 as conclusions  
2 of law.

3 13. Admitted.

4 14. Answering Defendant is without knowledge or information sufficient to justify  
5 a belief as to the truth of the averments of paragraph 14 of the Complaint concerning payment  
6 of the “First Call” invoices and therefore denies the same and demands strict proof thereof.  
7 Answering Defendant denies the remaining allegations of paragraph 14 as conclusions of law.

8 15. Answering Defendant admits only that the offloading of the Vessel was not  
9 completed during the First Call and that the Vessel returned to Canton Pier to complete the  
10 offloading. Answering Defendant is without knowledge or information sufficient to justify a  
11 belief as to the truth of the remaining averments of paragraph 15 of the Complaint, and  
12 therefore, denies the same and demands strict proof thereof.

13 16. Answering Defendant admits only that the Vessel returned to Canton Pier on  
14 August 5, 2022, to offload the remaining cargo. Answering Defendant denies the remaining  
15 allegations concerning the Master’s direction and approval as conclusions of law.

16 17. Answering Defendant admits only that Canton provided stevedoring services  
17 to offload cargo from the Vessel between August 5, 2022, and August 12, 2022. Answering  
18 Defendant denies the remaining allegations concerning the Master’s direction and approval as  
19 conclusions of law.

20 18. Answering Defendant admits only that the Master stamped/signed Canton’s  
21 reports. Answering Defendant denies the remaining allegations of paragraph 18 as conclusions  
22 of law.

23 19. Answering Defendant is without knowledge or information sufficient to justify  
24 a belief as to the truth of the averments of paragraph 19 of the Complaint, and therefore, denies  
25 the same and demands strict proof thereof.

26 20. Answering Defendant is without knowledge or information sufficient to justify  
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1 a belief as to the truth of the averments of paragraph 20 of the Complaint, and therefore, denies  
2 the same and demands strict proof thereof.

3 21. The averments of paragraph 21 of the Complaint are denied as conclusions of  
4 law.

5 22. The averments of paragraph 22 of the Complaint are denied as conclusions of  
6 law.

7 23. The averments of paragraph 23 of the Complaint are denied as conclusions of  
8 law.

9 **Count I – Prayer for the Arrest of the Vessel**

10 24. Answering Defendant incorporate its responses to paragraphs 1-23 set forth  
11 above as though fully set forth herein.

12 25. Denied.

13 26. Denied as stated. Answering Defendant admits only that the Master signed and  
14 stamped the stevedoring invoices. The remaining averments of paragraph 26 of the Complaint  
15 are denied as conclusions of law.

16 27. Answering Defendant is without knowledge or information sufficient to justify  
17 a belief as to the truth of the averments of paragraph 27 of the Complaint, and therefore, denies  
18 the same and demands strict proof thereof.

19 28. The averments of paragraph 28 of the Complaint are denied as conclusions of  
20 law.

21 29. The averments of paragraph 29 of the Complaint are denied as conclusions of  
22 law.

23 30. The averments of paragraph 30 of the Complaint are denied as conclusions of  
24 law.

25 WHEREFORE, Answering Defendant demands judgment in its favor along with costs  
26 and all other relief the Court deems appropriate.

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**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

Plaintiff's Complaint fails to state a claim against Answering Defendant upon which relief can be granted.

**Second Affirmative Defense**

Plaintiff is not the real party in interest or proper party to assert the claims set forth in the Complaint.

**Third Affirmative Defense**

The damages alleged in Plaintiff's Complaint, if they occurred, which is denied, were caused in whole or in part by acts, errors, omissions, negligence, breach of warranty or breach of contract of other parties, including the Plaintiff, or their agents, servants or employees, for whom Answering Defendant is not responsible.

**Fourth Affirmative Defense**

Answering Defendant claims the benefit of all defenses which may be available under any applicable contracts, charter parties, bills of lading, or other agreements or tariffs, including time bars, failure to give proper notice, forum selection clauses, arbitration clauses, applicable law, and any other applicable defenses.

**Fifth Affirmative Defense**

Plaintiff has failed to mitigate its damages.

**Sixth Affirmative Defense**

The Complaint should be dismissed on the grounds that Plaintiff has failed to join one or more indispensable parties under Rule 19 of the Federal Rules of Civil Procedure.

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**Seventh Affirmative Defense**

The stevedoring services provided by Plaintiff were not performed upon the order of the owner of the Vessel or by a person authorized by the owner and therefore Canton is not entitled to assert a maritime lien against the Vessel as required by 46 U.S.C. § 31342(a).

**Eighth Affirmative Defense**

Venue is improper in this District, and this action should be dismissed on the grounds of *forum non conveniens*.

WHEREFORE, Answering Defendant demands judgment in its favor and in favor of the Vessel and against Plaintiff along with the dismissal of Plaintiff's First Amended Complaint with prejudice at Plaintiff's cost and such other and further relief as this Honorable Court may deem proper and just under the circumstances.

Dated this 8<sup>th</sup> day of March, 2024.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of March, 2024, I caused to be served the foregoing ANSWER TO FIRST AMENDED COMPLAINT on the following party at the following address:

Katie Smith Matison, WSBA #20737 matisonk@lanepowell.com Daniel Miller, WSBA #56810 millerd@lanepowell.com LANE POWELL P.C. 1420 Fifth Avenue, Suite 4200 P. O. Box 91302 Seattle, WA 98111-9402 Telephone: 206.223.7000 <i>Co-Counsel for Canton Port Services, LLC</i>	Ashley L. Ensor, <i>pro hac vice</i> aensor@gw-law.com David McL. Williams, <i>pro hac vice</i> dmwilliams@gw-law.com GORMAN & WILLIAMS 36 South Charles Street, Suite 900 Baltimore, MD 21201 Telephone: 410.528.0600 <i>Co-Counsel for Canton Port Services, LLC</i>
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by:

- ☐ U.S. Postal Service, ordinary first class mail  
☐ U.S. Postal Service, certified or registered mail,  
☐ return receipt requested  
☐ hand delivery  
☐ facsimile  
☒ electronic service  
☐ other (specify) \_\_\_\_\_

/s/ Philip Lempriere

Philip Lempriere, WSBA #20304

CERTIFICATE OF SERVICE - 1

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